



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases access to public records.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

Current law authorizes the Department of Agriculture and Consumer Services (department) to issue licenses to carry concealed weapons or concealed firearms<sup>1</sup> to qualified persons.<sup>2</sup> The license is valid in Florida for five years from the date of issuance. The license must include a color photograph of the licensee. The licensee must carry the license and valid identification at all times when in possession of the concealed weapon or firearm.<sup>3</sup>

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit attesting to the applicant's completion of a firearms course, and a full frontal view color photograph<sup>4</sup> of the applicant.<sup>5</sup> The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of chapter 790, F.S., relating to weapons and firearms;
- A warning that the application is executed under oath; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.<sup>6</sup>

From 2005 to 2006, the department received 30,267 new applications and 34,182 renewal applications. Of those, the department issued 29,235 new licenses and 34,093 renewal licenses.<sup>7</sup>

Information submitted as part of the application process is a public record. In late 2005, an Orlando television station published on its website application information regarding holders of a concealed weapon license. The television station along with members of the Florida Legislature received numerous complaints concerning the Internet publication of such information.

#### Effect of Bill

The bill creates a public records exemption for personal identifying information, names, addresses, birth dates, social security numbers, phone numbers, and license numbers of individuals who have applied for or received a license to carry a concealed weapon or firearm. The exemption appears redundant as information such as the name, address, and social security number is, essentially, personal identifying information.

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<sup>1</sup> Concealed weapon or concealed firearm means a handgun, electronic weapon or device, tear gas gun, knife, or billie. It does not include a machine gun. Section 790.06(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Violation of s. 790.06(1), F.S., constitutes a noncriminal violation with a penalty of \$25. *Id.*

<sup>4</sup> The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

<sup>5</sup> Section 790.06(5), F.S.

<sup>6</sup> Section 790.06(4), F.S.

<sup>7</sup> "Concealed Weapon / Firearm Summary Report," viewed February 15, 2006, [http://licgweb.doacs.state.fl.us/stats/cw\\_monthly.html](http://licgweb.doacs.state.fl.us/stats/cw_monthly.html).

The Division of Licensing of the department must release the information:

- With the written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon request by law enforcement in the performance of their lawful duties.

The bill provides for future review and repeal of the exemption on October 2, 2010. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 119.0712, F.S., to create a public records exemption for certain information concerning an applicant for or holder of a concealed weapon or firearm license.

Section 2 provides a public necessity statement.

Section 3 provides a July 1, 2006, effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill likely could create a fiscal impact on the Department of Agriculture and Consumer Services, because staff responsible for complying with public records requests will require training relating to the newly created public records exemption. In addition, the department could incur costs associated with redacting the exempt information prior to releasing a record.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

**Vote Requirement**

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, the bill requires a two-thirds vote for passage.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, the bill includes a public necessity statement.

**Overly Broad**

Article I, s. 24(c) of the State Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides the purpose for the public records exemption. The stated purpose for this exemption is to protect applicants and licensees from profiling, harassment, theft, harm, and abuse “based solely on their choice to own firearms.” Based on the public necessity statement, it is unclear why the license number is protected from public disclosure. If personal identifying information is protected then protection of the license number does not appear necessary. As such, the exemption could be considered overly broad.

**B. RULE-MAKING AUTHORITY:**

This bill does not grant rule-making authority to any administrative agency.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**Drafting Issues**

The bill places the public records exemption in chapter 119, F.S., which typically houses exemptions applicable to all agencies. It appears that placement of the exemption in chapter 790, F.S., is more appropriate as that chapter specifically concerns weapons and firearms. The records custodian for the department might be more apt to look for the public records exemption in the latter chapter.

Further, the bill makes the application information exempt from public records requirements; however, the bill later refers to the information as confidential and exempt. There is a difference between records that are exempt from public records requirements and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>8</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup> As such, an amendment to address the language inconsistencies is needed.

**Public Records Law**

Article I, s. 24(a), Florida Constitution, sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

<sup>8</sup> See Attorney General Opinion 85-62.

<sup>9</sup> See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>10</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.

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<sup>10</sup> Section 119.15, F.S.